

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

POST OFFICE BOX SERVICE ENHANCEMENTS

Docket No. MC2012-26

REPLY COMMENTS OF THE UNITED STATES POSTAL SERVICE

(August 17, 2012)

On July 12, 2012, the Postal Regulatory Commission (“Commission”) issued Order No. 1401, noticing these proceedings and providing an opportunity for public comment on the Response of the United States Postal Service to Order No. 1366 (“Elective Filing”), filed on July 9, 2012.¹ The Postal Service’s Elective Filing provided additional information on service enhancements introduced at Competitive P.O. Box locations (“Service Enhancements”).² The Commission set the deadline for public comments as July 31, 2012.³ Responding to a request by the Associated Mail and Parcel Centers (“AMPC”), filed on July 19, 2012, the Commission extended the comment deadline to August 7, 2012.⁴ Over the course of the comment period 478 individual Commercial Mail Receiving

¹ Docket No. MC2012-26, Order No 1401: Notice and Order Concerning Elective Filing Regarding Post Office Box Service Enhancements (“Order No. 1401”) (July 12, 2012).

² Docket No. MC2012-26, Response of the United States Postal Service to Order No 1366 (“Elective Filing”) (July 9, 2012). The first service enhancement is the option to receive electronic notification of mail delivery to the customers of P.O. Box (“Real Mail Notification”). The second service enhancement is the option to use the Post Office street address and a “#” designation, in lieu of a “P.O. Box” designation, before the addressee’s box number (“Street Addressing”). As part of the Street Addressing enhancement, customers also have the option of receiving packages from private carriers at the customer’s P.O. Box address (“Private Carrier Package Delivery”).

³ Order No. 1401, *supra* note 1, at 3.

⁴ Docket No. MC2012-26, Order No. 1413: Order Granting Request for Extension to Comment Deadline, at 3 (“Order No. 1413”) (July 23, 2012).

Agencies (“CMRAs”), AMPC,⁵ the Independent Coalition of Franchise Owners (“ICFO”),⁶ the National Alliance of Retail Ship Centers (“NARSC”),⁷ Mr. David Popkin (“Mr. Popkin”),⁸ Mail Boxes Etc. (“MBE”),⁹ and the Public Representative (“PR”)¹⁰ filed comments. The Postal Service hereby provides its reply.

Given the large number and overlapping nature of the concerns raised, this Reply will not respond to each specific issue/argument discussed by commenters. Instead, the Postal Service has condensed the issues into representative arguments that best illustrate the commenters’ primary concerns. Accordingly, this Reply is divided into three sections. In Part I, the Postal Service addresses the arguments raised by AMPC, NARSC, ICFO, MBE, and individual CMRAs. In this section the Postal Service specifically addresses issues dealing with the Postal Service’s compliance with 39 U.S.C. § 3020.30 *et seq.*, and the commenters’ claims of unfair competition. In Part II, the Postal Service addresses the recommendations made by the Public Representative. In Part III, the Postal Service addresses the questions raised by Mr. Popkin by providing responses to those questions which address the “nature, scope, significance, and impact of the proposed modification,”¹¹

⁵ Docket No. MC2012-26, Comments of AMPC on Postal Service Elective Filing in Response of the United State Postal Service to Order No. 1366 (“AMPC Comments”) (August 7, 2012).

⁶ Docket No. MC2012-26, Comments of the Independent Coalition of Franchise Owners, Inc. (“ICFO Comments”) (August 7, 2012).

⁷ Docket No. MC2012-26, Comments of National Alliance of Retail Ship Centers on Postal Service Elective Filing in Response of the United States Postal Service to Order No. 1366 (“NARSC Comments”) (August 7, 2012).

⁸ Docket No. MC2012-26, Initial Brief of David B. Popkin (“Popkin Comments”) (August 7, 2012).

⁹ Docket No. MC2012-26, Comments of Mail Boxes Etc., Inc. on Post Office Box Service Enhancements (“MBE Comments”) (August 7, 2012).

¹⁰ Docket No. MC2012-26, Comments of the Public Representative (“PR Comments”) (July 26, 2012).

¹¹ Docket No. C2012-1, Order No. 1366 - Order on Motion to Dismiss Holding Complaint in Abeyance Pending Further Proceeding, at 14 (“Order No. 1366”) (June 13, 2012).

I. The Concerns of AMPC, ICFO, NARSC, and Individual CMRAs.

Though AMPC, ICFO, NARSC, and individual CMRA commenters (collectively “CMRA Commenters”) request that the Commission direct the Postal Service to discontinue the Service Enhancements or to repeal the CMRA Regulations,¹² they do not appear to hold the position that the Postal Service is never permitted to compete with CMRAs. Instead, the CMRA Commenters raise two primary concerns: 1) that the Postal Service’s elective filing did not provide enough information to satisfy Order No. 1366 or the requirements of 39 C.F.R. § 3020.30 *et seq.*;¹³ and 2) that the Service Enhancements, in combination with preexisting Postal regulations for CMRAs (“CMRA Regulations”), give the Postal Service an unfair competitive advantage.¹⁴ These concerns are best summarized by AMPC, which states that:

“[w]hile the USPS did file [its] ‘Elective Filing’ on the last possible date, the filing does not provide the information required by Order 1366 under the Commission Regulations.”¹⁵

and that

“[i]t is patently unfair and in violation of postal laws and regulation that the regulatory powers of USPS can be used to create an unfair competitive environment for CMRAs,”¹⁶

¹² AMPC Comments, *supra* note 5, at 8; ICFO Comments, *supra* note 6; NARSC Comments, *supra* note 7, at 8; Docket No. MC2012-26, Comments of Postal Solutions Inc, at 3 (“Postal Solution Comments”) (August 7, 2012); Docket No. MC2012-26, Comments of Box and Ship, at 1-2 (“Box and Ship Comments”) (July 20, 2012).

¹³ AMPC Comments, *supra* note 5, at 1-2; ICFO Comments, *supra* note 6, at 2; NARSC Comments, *supra* note 7, at 1-2; Postal Solutions Comments, *supra* note 12, at 3; Box and Ship Comments, *supra* note 12.

¹⁴ AMPC Comments, *supra* note 5, at 3-4; NARSC Comments, *supra* note 7, at 3-4; Docket No. MC2012-26, Comments of Postal Center USA (“Postal Center Comments”) (July 18, 2012).

¹⁵ AMPC Comments, *supra* note 5, at 1.

¹⁶ *Id.* at 3.

While these concerns might have some facial appeal, they are largely unsubstantiated. Indeed, CMRA Commenters ignore most of the information provided in the Postal Service's Elective Filing, merely parroting the claims raised by AMPC in Docket No. C2012-1.¹⁷ The Elective Filing made a *prima facie* case that the introduction of the Service Enhancements, in conjunction with the a significant price increase for Competitive P.O. Box locations,¹⁸ the loss of some customers due to that price increase,¹⁹ and minimal advertising,²⁰ has not put CMRAs at a competitive disadvantage. That *prima facie* case stands un rebutted. Though CMRA Commenters belatedly allege that certain Postal Service regulations treat CMRA and P.O. Box customers differently,²¹ they have not provided credible evidence demonstrating that those regulations caused and economic or competitive harm to CMRAs, especially not in the context of the introduction of the Service Enhancements.

Absent such evidence, the CMRA Commenters offer nothing more than nebulous claims of future competitive harm. Such unsubstantiated claims cannot succeed on the merits. What's more, forcing the Postal Service to discontinue the Service Enhancements based on such tenuous claims would not only represent a distorted application of Postal laws, but could send the wrong signal to the private sector: you can protect yourself from competition by filing unsubstantiated complaints before the Commission to block the introduction of

¹⁷ See Docket No. C2012-1, Complaint Regarding Postal Service Offering Enhanced Services Product for Competitive PO Boxes, ("AMPC Complaint") (March 15, 2012).

¹⁸ Elective Filing, *supra* note 2, Attachment B, at 3-4.

¹⁹ *Id.* at 3.

²⁰ *Id.* at 7.

²¹ AMPC Comments, *supra* note 5, at 3-4; ICFO Comments, *supra* note 6, at 1; NARSC Comments, *supra* note 7, at 3-4; Postal Center Comments, *supra* note 14, at 2.

sensible and beneficial enhancements to postal products. Accordingly, the Commission should approve the Service Enhancements in this docket.²²

a. Sufficient Information has Already Been Provided to the Commission in Accordance with 39 C.F.R. § 3020.30 *et seq.*

CMRA Commenters request that the Commission refrain from approving the Service Enhancements, because the Postal Service has not provided the Commission with: 1) detailed cost information;²³ 2) the number of competitive locations offering the Service Enhancements;²⁴ and 3) an explanation of why the Postal Service decided to offer the Service Enhancements.²⁵ CMRA Commenters claim that this information is required by Order No. 1366 and Commission's regulations.²⁶ The CMRA Commenters, however, either ignore information already provided in the Postal Service's Elective Filing, or incorrectly assume that the Commission needs more detailed information to ensure compliance with Title 39.

In pertinent part, 39 C.F.R. § 3020.32 requires the Postal Service to "[e]xplain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. § 3633." Section 3633 requires, among other things, that each competitive product cover its attributable costs.²⁷ Contrary to the position of CMRA Commenters, these provisions do not require a specific amount of detail, but only require the Postal

²² This result would not foreclose CMRA Commenters from filing a new Complaint if proof of an unfair competitive advantage materializes.

²³ AMPC Comments, *supra* note 5, at 1-2; NARSC Comments, *supra* note 7, at 1-2.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 1.

²⁷ 39 U.S.C. § 3633(1)(2).

Service to explain why the competitive product satisfies the requirements.

Indeed, in Order No. 1366, the Commission requested that the Postal Service provide only “such information and data, and such statements of reasons and bases, as are *necessary* and *appropriate* to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification,” [emphasis added].²⁸ The Postal Service believes that the information already provided in its Elective Filing meets these standards.

With respect to demonstrating that Competitive P.O. Box Service will comply with 39 U.S.C. § 3633, the Commission already accepted the Postal Service’s explanation (predicting a cost coverage of 140 percent)²⁹ in Docket No. MC2011-25.³⁰ To the extent that the Service Enhancements affect the ability of Competitive P.O. Box Service to comply with section 3633, the Postal Service has already reported that it spent under \$300,000 to implement the Service Enhancements, far below the contribution for P.O. Box Service.³¹ The Postal Service also reported a ten percent increase in revenue for Competitive P.O. Box Service over the same period last year.³² The combination of these three figures (a significant cost coverage to start, a year-over-year revenue increase, and a

²⁸ Order No. 1366, *supra* note 11, at 14.

²⁹ Docket No. MC2011-25, Request of the United States Postal Service to Transfer Post Office Box Service in Selected Locations to the Competitive Product List, Attachment B, at 3 (May 13, 2011).

³⁰ See Docket No. MC2011-15, Order No. 780 - Order Approving Request to Transfer Additional Post Office Box Service Locations to the Competitive Product List (July 29, 2012).

³¹ Elective Filing, *supra* note 2, Attachment B, at 2. The Postal Service’s implementation costs are relatively low, because the introduction of the Service Enhancements merely builds upon existing systems and capabilities. For street addressing, the Postal Service already has systems for establishing and recognizing valid addresses, including addresses that use the “#” sign. For private carrier package delivery, the Postal Service already receives and delivers packages from private carriers (e.g., FedEx SmartPost®). For e-mail notification, the Postal Service already has a system for delivering email messages to its customers. This system is already used for Track and Confirm by email, and for electronic return receipt service.

³² *Id.*

minimal investment) is sufficient for the Commission to determine that Competitive P.O. Box Service will remain in compliance with section 3633.

While CMRA Commenters may wish to have access to additional information, it is not statutorily required. Additionally, detailed cost and revenue information for Competitive P.O. Box Service is proprietary, and should not be made available to competitors. Thus, such information should only be requested if it is truly necessary for the resolution of the issues in this docket. In that case, the information would be filed with the Commission under seal.

With respect to providing the Commission with the number of Competitive P.O. Box locations offering the Service Enhancements, and an explanation for why the Postal Service chose to introduce the Service Enhancements, the Postal Service has already provided the Commission with most of this information. In its Elective Filing, the Postal Service already reported that approximately 400 competitive locations do not offer Street Addressing or Private Carrier Package Delivery, and that approximately 150 competitive locations do not offer Real Mail Notification.³³ At the time of its Elective Filing, the Postal Service failed to mention that all but one of the Competitive P.O. Box Locations (totaling 6,788) offer at least one of the Service Enhancements. Additionally, with respect to offering an explanation for why the Postal Service chose to introduce the Service Enhancements at Competitive P.O. Box locations, the Postal Service has already reported that these services were frequently requested by customers prior to its introduction.³⁴

³³ Elective Filing, *supra* note 2, Attachment B, at 7.

³⁴ *Id.* at 5.

Based on the above, and the information already provided in its Elective Filing, the Postal Service believes that it has provided the Commission with enough information to satisfy the requirements of 39 C.F.R. § 3020.30 *et seq.*

b. Existing Postal Regulations do not Give the Postal Service an Unfair Competitive Advantage.

The CMRA Commenters also claim that the Service Enhancements, in combination with preexisting CMRA Regulations, create an unfair competitive advantage for the Postal Service. To support this claim, CMRA Commenters point to the fact that the CMRA Regulations: 1) require that CMRAs forward the mail for departed or cancelled customers for 6 months;³⁵ 2) prevent CMRA customers from filing a change of address form;³⁶ and 3) require that CMRAs provide a quarterly list of its customers to the local Postmaster.³⁷ CMRA Commenters also raise concerns about the Postal Service's potential move from 6-to-5 day delivery.³⁸

Unfortunately, CMRA Commenters have again failed to substantiate their claims. While pointing to isolated examples of differential treatment might have superficial appeal, it does not explain how any of these regulations (or hypothetical operational changes) violate 39 U.S.C. § 404a(1). Such an explanation is necessary, since the regulations cited are only tangentially related to the Service Enhancements, and since Postal Service has provided reasonable

³⁵ AMPC Comments, *supra* note 5, at 3; ICFO Comments, *supra* note 6, at 1; NARSC Comments, *supra* note 7, at 3; Postal Center Comments, *supra* note 14, at 2.

³⁶ AMPC Comments, *supra* note 5, at 3-4; ICFO Comments, *supra* note 6, at 1; NARSC Comments, *supra* note 7, at 3-4; Postal Center Comments, *supra* note 14, at 2.

³⁷ AMPC Comments, *supra* note 5, at 4; ICFO Comments, *supra* note 6, at 1; NARSC Comments, *supra* note 7, at 4; Postal Center Comments, *supra* note 14, at 2.

³⁸ AMPC Comments, *supra* note 5, at 2; ICFO Comments, *supra* note 6, at 1; NARSC Comments, *supra* note 7, at 2; Postal Center Comments, *supra* note 14, at 2.

justifications for these requirements in the past.³⁹ Most importantly, CMRAs have not demonstrated why these regulations, which CMRAs have thrived under for decades, now create an unfair competitive advantage. The Postal Service maintains its position that neither the Service Enhancements nor the CMRA Regulations create any competitive harm.

At the outset, it is important to note that CMRA Commenters' concerns have been largely addressed in the Postal Service's Elective Filing. There, the Postal Service explained that the combination of a significant price increase at Competitive P.O. Box locations,⁴⁰ the loss of some P.O. Box customers due to that price increase,⁴¹ and minimal advertising,⁴² have not created an unfair competitive advantage. Additionally, the Postal Service addressed CMRA concerns about Street Style Addressing by explaining that this enhancement merely places CMRA and P.O. Box customers on a level playing field: allowing each set of customers to use the “#” designation in their address.⁴³ Finally, the Postal Service noted that, despite the Service Enhancements, CMRAs retain significant competitive advantages over the Postal Service, including their ability to offer “both packing and printing services.”⁴⁴ CMRA Commenters have not rebutted these arguments.

Nevertheless, CMRA Commenters continue to paint themselves as helpless small businesses that will be unable to compete with the Postal

³⁹ See 64 Fed. Reg. 14385 (“Final Rule”) (March 25, 1999). A copy of this document is provided as (Attachment A).

⁴⁰ Elective Filing, *supra* note 2, Attachment B, at 3-4.

⁴¹ *Id.* at 3.

⁴² *Id.* at 7.

⁴³ *Id.* at 8.

⁴⁴ *Id.* at 9.

Service's institutional advantages. These claims, however, fall apart when scrutinized. First, most of the individual CMRA stores that filed comments in this proceeding are UPS stores, which benefit from significant amounts of advertising by their corporate parent. Other CMRA stores are not prevented from similarly collaborating in terms of advertising, joint purchasing, etc. What's more, CMRA Commenters continue to understate the competitive advantages that they presently enjoy, namely printing and packing services, and having more flexibility to innovate or rapidly adjust their product offerings. In contrast, the Postal Service is constrained from taking similar actions until it has completed a sometimes lengthy administrative review process. Consequently, it is misleading to suggest that all CMRAs are defenseless small businesses.

To the extent that the Postal Service has not addressed CMRA Commenters' concerns about mail forwarding and customer lists, this is largely because the focus of the comments in this docket has shifted since *AMPC et al.* initiated Docket No. C2012-1. Specifically, Docket No. C2012-1 began with AMPC asserting that the Service Enhancements should be discontinued, because the Postal Service did not make a public filing to demonstrate compliance with 39 U.S.C. § 3633.⁴⁵ AMPC's initial filing only mentioned the CMRA Regulations once.⁴⁶ Strangely, CMRA Commenters now focus almost exclusively on the CMRA Regulations and the reasons for why they create an unfair competitive advantage.

⁴⁵ AMPC Complaint, *supra* note 17, at 2-6, 9-14.

⁴⁶ *Id.* at 20.

This significant shift reveals what the Postal Service believes might be the true motivation behind these proceedings: another attempt by CMRA trade associations to overturn the longstanding regulations. Indeed, the Commission previously addressed the comments of CMRAs who opposed such regulations in Docket No. MC2010-20 (transferring 49 P.O. Box locations to the competitive product list). There, the Commission noted that “[t]here is no suggestion that the rules applicable to CMRAs have changed as a result of the instant proposal or that those rules are otherwise subject to this Request.”⁴⁷ The Postal Service believes that the same observation applies in this proceeding.

First, with respect to the requirement that CMRAs forward the mail of former customers for 6 months, the Postal Service would refer the Commission and the CMRA Commenters to its original explanation in the 1999 final rule. There, as here, CMRAs claimed that this regulation would be burdensome, and that it treated CMRAs differently from all other postal customers.⁴⁸ However, as the Postal Service explained, other entities receiving bulk delivery of mail to former customers, residents, or employees (i.e. universities, hotels, hospitals, institutions, some apartment buildings, and employers) must manually redirect such mail by writing a new address on the piece.⁴⁹

However, as CMRAs point out in this proceeding, unlike other bulk mail delivery points, CMRAs must affix new postage to have this mail redirected to the

⁴⁷ Docket No. MC2010-20, Order No. 473 – Order Approving Request to Transfer Selected Post Office Box Service Locations to the Competitive Product List, at 10, n. 21 (June 17, 2010).

⁴⁸ Final Rule, *supra* note 39, at 14385.

⁴⁹ *Id.* at 14388.

recipient.⁵⁰ As the Postal Service explained in the 1999 rulemaking, this treatment is justified, because “[u]nlike other bulk delivery points, CMRAs advertise and charge customers for mail services, which is a primary, rather than incidental, part of their business.”⁵¹ The Postal Service further explained that it did not consider the costs of redirecting mail to be burdensome, because CMRA’s “are free to pass these costs on to their customers,” and because “many if not all CMRAs already perform this same re-mailing service for customers not located in the same geographic area as the CMRA...”⁵² Indeed, were the Postal Service to permit CMRAs to redirect mail free of charge, CMRAs could continue to provide re-mailing services by simply placing a new address on the pieces and having the Postal Service redeliver the mail to existing customers living in a different geographic area. This would place the Postal Service at a competitive disadvantage, since Postal Service regulations prevent customers from using P.O. Boxes for the purpose of having mail redirected to another location.⁵³

Significantly, if the such costs of forwarding the mail of former customers becomes too burdensome, postal regulations already allow CMRAs to stop forwarding such mail, “if the CMRA customer provides written instructions to the CMRA that the mail (or specific types of mail) not be remailed upon termination of the relationship. This instruction may be provided in an internal service agreement between the customer and CMRA or by a separate document.”⁵⁴

⁵⁰ AMPC Comments, *supra* note 5, at 3; ICFO Comments, *supra* note 6, at 1; NARSC Comments, *supra* note 7, at 3; Postal Center Comments, *supra* note 14, at 2.

⁵¹ Final Rule, *supra* note 39, at 14388.

⁵² *Id.*

⁵³ MCS 1550.1(e); Domestic Mail Manual, § 508.4.4.6.

⁵⁴ Domestic Mail Manual § 508.1.8.3(b).

Second, with respect to preventing CMRA customers from filing change-of-address orders, the Postal Service again directs the attention of the Commission and CMRA Commenters to its explanation in the 1999 final rule. There, the Postal Service explained that it is impractical for the Postal Service to accept change-of-address orders from former CMRA customers, because “[t]o do so would require the Postal Service to manually inspect large quantities of mail to extract individual pieces addressed to former customers.”⁵⁵ The Postal Service further explained that such manual efforts “would entail significant time and expense for the Postal Service and delay the timely delivery of mail.”⁵⁶

These explanations remain valid. In fact, the Postal Service is confronted with the same problem at all bulk delivery points, which must manually redirect the mail of former residents or customers.⁵⁷ In short, since entities receiving bulk delivery of mail are considered single delivery points, the Postal Service’s automated forwarding systems cannot reliably extract the mail of individuals (such as CMRA customers) who receive mail at these locations. Significantly, Postal Service regulations also restrict the use of change-of-address orders for P.O. Box customers, only allowing only the box customer listed on the P.O. Box service application to submit a change-of-address form.⁵⁸ It is the responsibility of that customer to forward mail to other persons receiving mail at that box.⁵⁹ Thus, this regulation is based on nothing more than operational necessities. CMRA Commenters have not provided any credible examples or evidence

⁵⁵ Final Rule, *supra* note 39, at 14388

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Domestic Mail Manual § 508.4.4.7(a-b).

⁵⁹ *Id.*

suggesting that this regulation creates an unfair competitive advantage for the Postal Service.

Third, with respect to requiring that CMRAs provide a quarterly list of their customers to local Postmasters, the Postal Service again provided a reasonable explanation in the 1999 final rule. There, the Postal Service explained that the lists are necessary to “ensure mail security and compliance with CMRA requirements,” including allowing the Postal Service “to ensure that all addressees receiving mail at CMRAs have a completed PS Form 1583.”⁶⁰ The need for CMRAs to file their customer lists remains the same today.

Though CMRA Commenters claim that the Postal Service could use CMRA customer lists to advertise to advertise its P.O. Box service to CMRA customers,⁶¹ the Postal Service has never used CMRA customer lists for that purpose and has no intention of using them. Indeed, the Postal Service’s own privacy policies,⁶² and fundamental tenets of business ethics, would prevent it from utilizing the CMRA customer lists to solicit new business. What’s more, the quarterly customer lists are not housed in a centralized database that could be easily utilized. Instead, such information is only kept in paper form by local Postmasters, who utilize such lists to ensure compliance with CMRA regulations.

Finally, with respect to CMRA Commenters’ claims that they will be treated differently from P.O. Boxes if the Postal Service moves to a five-day

⁶⁰ Final Rule, *supra* note 39, at 14387.

⁶¹ AMPC Comments, *supra* note 5, at 4; NARSC Comments, *supra* note 4, at 2; Postal Center Comments, *supra* note 14, at 2.

⁶² See policy pertaining to “opt-in” marketing. <http://about.usps.com/who-we-are/privacy-policy/welcome.htm#choice>.

delivery schedule,⁶³ the Postal Service would simply note that such claims are premature. Plans to move to five-day delivery have been stopped by Congressional action, and may be further delayed by proposals currently pending before Congress. Accordingly, such claims are not at issue in this proceeding.

The Postal Service has therefore explained why the Service Enhancements, in combination with the CMRA Regulations, do not give the Postal Service an unfair competitive advantage. Other than baldly pointing to minor differences in the way CMRA and P.O. Box customer are treated, CMRA Commenters have not offered substantive evidence suggesting that these differences have a practical or meaningful impact on CMRAs' ability to compete with the Postal Service. This argument is made more difficult by the fact that the CMRA Regulations have been in place for at least 13 years.⁶⁴ Consequently, the Postal Service does not believe that the Commission should consider the extraordinary claim that postal regulations that have been legally promulgated should be invalidated.

II. Concerns Raised by the Public Representative

The Public Representative ("PR") urges the Commission to "refrain from approving the proposed changes to the competitive post office box service..." until issues of unfair competition are resolved in a complaint proceeding.⁶⁵ Unfortunately, this request is problematic for two reasons: 1) it would unfairly hold the Service Enhancements hostage, even though, as discussed above, no

⁶³ AMPC Comments, *supra* note 5, at 2; NARSC Comments, *supra* note 7, at 2; Postal Center Comments, *supra* note 14, at 2.

⁶⁴ See Final Rule, *supra* note 39.

⁶⁵ PR Comments, *supra* note 10, at 7.

credible evidence of unfair competition has been presented; and 2) it would encourage the Commission to misapply the bedrock foundations of the Postal Accountability and Enhancement Act (“PAEA”) and antitrust principles. The Commission should decline to adopt the PR’s approach and resolve the status of the Service Enhancements in this docket.

First, the PR expresses concern that “changes to the competitive post office box service product offering *may* be anticompetitive.” [emphasis added].⁶⁶ In support of this statement the PR states that the Postal Service’s CMRA competitors are:

“prohibited from offering certain services by law, regulation, or the improper use of the Postal Service’s monopoly powers. If such action is allowed, it would disrupt the level playing field in the competitive PMB market and allow the Postal Service to use its unique position as a monopoly and regulator to unfairly drive its PMB competitors out of the market and leave the general public with less choice, lower quality services, and higher prices.”⁶⁷

In spite of this statement, the PR does not identify any services which CMRAS are “prohibited” from offering, and admits that “[a]t this juncture, there is not sufficient evidence in the record for the Public Representative to make a determination as to whether the PMB providers can prove these claims.”⁶⁸ In fact, CMRAs have always been permitted to provide the same services as the Postal Service, including forwarding, at no additional charge to the customers. The only present argument is who should absorb the costs of these services.

Despite these infirmities, the PR encourages the Commission to “apply a ‘motion to dismiss’ standard of review ‘and accept as true all of the factual

⁶⁶ *Id.* at 6.

⁶⁷ *Id.* at 4.

⁶⁸ *Id.* at 7, n. 20.

allegations contained in the' filings."⁶⁹ However, the time for CMRA Commenters to present convincing evidence has already come and gone. CMRA Commenters could have introduced such evidence at any stage of Docket No. C2012-1, or in their comments; they have not done so. To take the PR's approach, and provide CMRA Commenters with yet another "bite at the apple," would not only unfairly hold the Service Enhancements hostage, but would smack of naked protectionism. Without the most basic elements of proof (i.e. examples of how the CMRA Regulations have caused economic harm), the Postal Service should not be forced endure an intrusive discovery period, which would provide its cost details, operational considerations, and marketing ideas to competitors.

Second, with respect to the Commission's responsibility to police the Postal Service's anticompetitive activities, the PR states that:

"[u]nder the PAEA, the Commission was entrusted with the responsibility of safeguarding a level playing field with respect to certain types of Postal Service anticompetitive activities...[t]his case appears as though it may implicate these PAEA requirements."⁷⁰

However, the PR's recommendations (accepting the baseless allegations of competitors as true) would twist this responsibility into one that protects the competitor rather than competition. This fundamentally misunderstands the foundations of the PAEA, namely fair competition,⁷¹ and misapplies bedrock

⁶⁹ PR Comments, *supra* note 10, at 7, n. 20.

⁷⁰ *Id.* at 5.

⁷¹ Sen. Rep. 108-318, at 27 (2006) ("The Postal Service, in our view, plays an important role in offering competitive products, even though a number of private sector businesses provide alternative services.").

principles of antitrust law. Indeed, as Justice Black explained about Sherman Antitrust Act:

“It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions. But even were that premise open to question, the policy unequivocally laid down by the Act is competition.”⁷²

Rather than acknowledging the better service now provided to more than 130,000 postal customers using the Service Enhancements, the PR focuses on the unproven (and unlikely) risk that CMRAs will be the victims of unfair competition.

As the Postal Service explained above, and in its Elective Filing, there is no support for a claim that the introduction of the service enhancements will drive PMB competitors out of the market. When the Postal Service raises price substantially, loses some customers due to this price change, and spends minimal amounts on advertising, there is no reasonable basis to warrant a claim of unfair competition. This is especially true when the regulations giving rise to such claims are the same regulations that have existed for a substantial period of time, were capable of being challenged at the time they were adopted, and are, at most, tangentially related to the Service Enhancements themselves.

The greater risk from the PR’s arguments is that they could be used to justify stopping (or at a minimum delaying) the Postal Service from offering these or other future service enhancements. If the Postal Service is to be expected to

⁷² Northern Pac. Railway v. U.S., 356 U.S. 1, 4 (1958).

introduce sensible product enhancements that will allow it to continue satisfying its universal service obligation, the Commission cannot allow itself to become a means for competitors to delay or prevent fair competition. As the mailing industry continues to be buffeted by technological innovations, there can be little doubt that, given the opportunity, competitors of the Postal Service could use the complaint process for this very purpose.

As then Commissioner (now Chairman) Goldway cautioned in her separate opinion in Docket No. MC2000-2 (Mailing Online), the Commission's "concern should focus on harm to competitors *if* it results in harm to competition and ultimately harm to consumers."⁷³ Simply put, the PR and CMRA Commenters have not presented a case that convincingly demonstrates either of those harms. As a result, the Commission should resolve the status of the Service Enhancements in this docket and find that the Postal Service is fairly competing with CMRAs.

III. Concerns Raised by Mr. David B. Popkin

Mr. Popkin presents several questions regarding Attachment C of the Postal Service's Elective Filing.⁷⁴ Mr. Popkin has a different perspective on the Service Enhancements – that of a customer, rather than a competitor. He asks for more information about the Service Enhancements, but does not challenge their offering. While some of his questions are beyond the scope of this

⁷³ Docket No. MC2000-2, Opinion and Recommended Decision - Statement of Commissioner Goldway, at 5. (June 21, 2000).

⁷⁴ Popkin Comments, *supra* note 8, at 1.

proceeding (such as his questions about Signature on File),⁷⁵ or concern details that are not needed to resolve the issues in this proceeding, the Postal Service can offer the following responsive comments.

As noted above, the service enhancements are available at almost all the competitive Post Office Box service locations. Offering one or more of the service enhancements is not feasible at a few hundred competitive locations. For example, street addressing is not available at a Post Office located in a large building in which offices are identified with the “#” sign; in such a case, street addresses in a similar format for PO Boxes are not feasible. The Postal Service’s goal is to inform all PO Box customers about the service enhancements available to them. But, at some locations (apparently including Mr. Popkin’s location), notice has been lacking.

The Postal Service is offering its customers delivery of packages brought by private carriers, rather than delivery of any item (such as a lunch brought by one spouse for another) that is brought to a Post Office with a PO Box address. The requirement that proof of shipping payment be provided is designed to limit the scope of private carrier package delivery, and has not raised significant administrative or customer service problems with respect to accepting packages. The customer agreement also notes that only mailable items are permitted. Thus, the maximum size limits in the Domestic Mail Manual apply.

⁷⁵ Id. at 3-4.

IV. Conclusion

As the Postal Service has previously acknowledged, the Service Enhancements do make P.O. Box service more comparable to offerings of CMRAs. However, the PAEA and basic antitrust principles do not prevent the Postal Service from fairly competing. While postal laws prevent the Postal Service from using its regulatory authority to create an unfair competitive advantage, CMRA Commenters have only been able to point to minor regulations that are at most, tangentially related to the Service Enhancements themselves.

Moreover, the Postal Service has offered legitimate explanations for why those regulations, and the Service Enhancements themselves, do not give it an unfair competitive advantage. Without more, the Commission has no reasonable basis to find that the Postal Service has inappropriately introduced these services. To do so could embolden competitors to bring baseless complaints to the Commission, and could, though unintentionally, discourage the Postal Service from offering fair and sensible service enhancements. Consequently, the Postal Service requests that the Commission find that the Service Enhancements are consistent with the policies and requirements of the PAEA, and that they do not give the Postal Service an unfair competitive advantage.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux

Chief Counsel, Pricing & Product Support

John F. Rosato

David H. Rubin

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-8597, Fax -6187
August 17, 2012

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(b) *Special local regulations.* (1) All persons and vessels not authorized as participants or official patrol vessels are spectators. The "official patrol" consists of any Coast Guard, public, State, county, or local law-enforcement vessels assigned or approved by Commander, Coast Guard Activities Baltimore.

(2) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(3) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(4) Spectator vessels may enter and anchor in areas outside the regulated area without the permission of the Patrol Commander. They shall use caution not to enter the regulated area. No vessel shall anchor within a tunnel, cable, or pipeline area shown on a Government chart.

(5) The Coast Guard Patrol Commander will announce the specific time during which the regulations will be enforced, by Broadcast Notice to Mariners on channel 22 VHF-FM marine band radio.

(c) *Effective dates.* The regulated area is effective from 11 a.m. EDT (Eastern Daylight Time) to 3 p.m. EDT on April 28, April 29, and April 30, 1999.

Dated: March 5, 1999.

Roger T. Rufe, Jr.,
Vice Admiral, U.S. Coast Guard Commander,
Fifth Coast Guard District.

[FR Doc. 99-7323 Filed 3-24-99; 8:45 am]

BILLING CODE 4910-15-M

addressee's mail to a commercial mail receiving agency (CMRA). The rule provides procedures for registration to act as a CMRA; an addressee to request mail delivery to a CMRA; and delivery of the mail to a CMRA. This rule adopts with changes a proposed rule published for public comment on August 27, 1997, in the **Federal Register** (62 FR 45366-45368).

EFFECTIVE DATE: April 26, 1999.

FOR FURTHER INFORMATION CONTACT: Roy E. Gamble, (202) 268-3197.

SUPPLEMENTARY INFORMATION: On August 27, 1997, the Postal Service published in the **Federal Register** a proposed rule to amend sections D042.2.5 through D042.2.7 of the Domestic Mail Manual (62 FR 45366-45368). The proposed rule was in response to a need to clarify and revise current rules. Recent audits and follow-up reviews indicated a need for easy-to-understand rules to satisfy the different needs and requirements of the sender and the addressee of mail sent to CMRA addresses.

The proposed rule clarifies and updates the requirements to be consistent with other current postal rules, policies, and requirements. In many instances, these requirements are similar to those for obtaining post office box service. The requirements are protective of the sender's requirement for a secure mailstream. They are sensitive to the addressee's desire to have a CMRA receive delivery of his or her mail and hold it for pickup or re-mail it to the addressee, prepaid with new postage.

Comments on the proposed rule were due on or before September 26, 1997. The Postal Service reopened the public comment period for an additional 30 days with written comments due on or before December 24, 1997, (62 FR 62540 November 24, 1997). The Postal Service received a total of 8,107 comments. Of the total, 727 comments were from CMRA owners, 7,365 were from CMRA customers, four were from CMRA franchisers and associations, and one comment was from a Member of Congress. These comments were largely identical in content and format, and generally opposed the proposed rule. The Postal Service received 10 comments that generally supported the proposed rule. Large firms and associations, including financial institutions and trade associations of mailers, consumers, and law enforcement officials submitted these comments. The Postal Service also received a number of comments after the deadline that were similar in nature and content to those received on-time

that generally opposed the proposed rule.

At the outset, it may be useful to address in more detail the purposes of this rulemaking. A number of commenters who opposed the new rule questioned the intent of the undertaking to amend the rule. There are assertions from the CMRAs that compliance with the regulations will "pu[t] CMRAs out of business." Customers of CMRAs assert that the rulemaking "appears to discriminate against them because of [their] choice of an address."

These claims are erroneous. The sole postal purpose of the rule is to increase the safety and security of the mail. The rule is designed to benefit both businesses and consumers by reducing the opportunities to use the mail for fraudulent purposes. The rule is intended to ensure that mailers are confident that addresses provided by prospective customers are actually used by these customers, and that the mail will reach the recipient, rather than be returned to the sender.

Comments from business, consumer, and law enforcement organizations recognize these purposes and indicate strong support for the rule. Indeed, in several cases, the commenters advocate even stronger provisions. The commenters describe a variety of problems addressed by the rule. For instance, several commenters refer to the term "identity theft," referring to criminal schemes with potential significant financial consequences to an innocent victim. The criminal may apply for new credit cards in the individual's name or request that the credit card issuers change the address of the legitimate cardholder. In each case, the criminal requests that future mailings are sent to an address that he or she controls.

One of the purposes of the rule is to strengthen the identification process at the time of application to receive mail through a CMRA. Thus, there are additional safeguards to ensure that a CMRA verifies that the applicant is the individual to whom mail will be addressed. The Postal Service has adopted safeguards in other instances where the mails may be used for fraudulent purposes, including strengthening the identification process for those applying to use post office box service as well as additional safeguards in change-of-address procedures. Thus the Postal Service is not "singling out" CMRAs.

Compliance with the prescribed procedures may, as noted by some commenters, impose additional burden on some CMRAs. It is true that CMRAs and their customers are, in the

POSTAL SERVICE

39 CFR Part 111

Delivery of Mail to a Commercial Mail Receiving Agency

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends section D042.2.5 through D042.2.7 of the Domestic Mail Manual (DMM) to update and clarify procedures for delivery of an

overwhelming majority of cases, innocent of any wrongdoing. Indeed, one commenter who supported the rule referred to CMRAs as “unwitting conduits” in these frauds.

Unfortunately, there are numerous instances in the modern world (e.g., airport security checks, custom searches, and restrictions on mailing parcels in collection boxes) where innocent people suffer inconvenience or expense due to the actions of a few lawbreakers. While the harms addressed in this rulemaking may not entail the physical dangers addressed in some of these examples, the potential financial consequences suffered by innocent victims can be devastating.

The Postal Service is not imposing administrative and financial burdens solely on the CMRAs or their customers. As noted above, the Postal Service undertakes similar administrative efforts with respect to persons using post office box service. Moreover, local postal officials are being asked to increase efforts to work with CMRAs to ensure knowledge of, and compliance with, these regulations. Finally, Postal Inspectors investigate complaints that CMRAs, post office boxes, or other addresses are being used in conducting fraudulent schemes. As observed by some commenters, the Postal Service and CMRAs act together to ensure that mail is delivered from the sender to the CMRA and then to the CMRA’s customer, the addressee. This rulemaking extends this partnership by ensuring that the Postal Service and CMRAs work together for the equally important objective of ensuring that their customers are not the victims of fraud.

Numerous commenters, particularly CMRAs, oppose the updated requirement that assigns responsibility to the CMRA for verification of the addressee’s permanent residential or business address entered on PS Form 1583, Application for Delivery of Mail Through Agent. The CMRAs asserted that this requirement is a huge burden that operators are unequipped to bear. The CMRAs said that the “Postal Service should not force CMRA operators to seek information that the Postal Service wants; operators are not police officers or private investigators.”

In contrast, commenters who supported the rulemaking strongly favored this proposal and argued that, if anything, it does not go far enough. These commenters asserted that the requirements would reduce the number of persons who use a CMRA address to shield the user’s identity and will help in the apprehension of individuals who use CMRAs for such purposes. These

commenters suggested that the provisions be strengthened by requiring CMRAs to maintain a photocopy of the applicant’s photo identification; and, by eliminating proposed section D042.2.6(a)(4) that permits the applicant’s second item of identification “to be another credential showing the applicant’s signature and a serial number or similar information that is traceable to the bearer.”

The Postal Service has determined to adopt the proposed rule with certain clarifications. To a large degree, the proposed rule is similar to that in effect today in that an applicant for CMRA service must submit identification when applying for service. The proposed rule, with additional clarifying language, makes explicit the procedures that are implicit today; e.g., that the CMRA must review the identification to ensure that the applicant is the person he or she claims. These identification procedures are similar to those followed by the Postal Service for persons applying for post office box service. The Postal Service does not believe that these procedures are burdensome. Moreover, even if this was not true, we believe the procedures are necessary to prevent the fraud and mail security problems described by the mailers, consumers, and law enforcement groups supporting the rule. The proposal simply requires that the CMRA match the information on the application with that on the valid identification presented. If a discrepancy exists between the two, the CMRA must require that the addressee substantiate that he or she resides or conducts business at the address shown. The CMRA must deny the application if the addressee is unable to substantiate the address. This is an essential element in preventing mail delivery to a CMRA without verifiable consent of the actual addressee and reflects current practices to confirm that the identification belongs to the person presenting it. The information and the procedure will help the CMRA hinder fraud schemes involving identity theft. As an additional benefit, the verification of the address ensures that the CMRA has an address to re-mail mail or trace customers who terminate the relationship without prior notification.

The Postal Service has determined to retain the option to use “other credential” as one of the forms of identification (D042.2.6(a)(4)). The Postal Service believes that this provision is clear. The other credential could, for example, include a document such as a current lease, mortgage, deed, voter registration card, or a university identification card. In most instances these forms of identification would

contain a signature and an address, and in some cases a photograph. The additional options will provide the CMRA with sufficient valid identification to confirm that the person presenting it is the addressee. Moreover, elimination of this provision could be burdensome to CMRAs and their customers of whom many may not have two of the other required forms of identification.

The comment recommending that the rule be amended to require the CMRA to retain a photocopy of the addressee’s photo identification asserts that this would assist law enforcement officials to apprehend criminals and that it would only be a minor additional burden on the CMRA to maintain a photocopy. While the Postal Service does not disagree with this argument, we have determined, nevertheless, not to adopt this recommendation at this time. The Postal Service strongly believes that full compliance with procedures outlined in the proposed rule and due diligence by the CMRA owners will be sufficient to deter wrongdoing. The proposed rule does, moreover, permit CMRA owners to retain photocopies when they believe it appropriate. However, as part of its ongoing efforts to deter mail fraud at all addresses, including CMRAs, the Postal Service will continue to review its procedures and will propose adjustments where needed.

There is an additional clarification in this portion of the final rule. In general, each person receiving mail through a CMRA must complete a PS Form 1583, i.e., if three persons share a single CMRA private mailbox delivery address, each must submit a completed PS Form 1583. One CMRA commenter suggested a revision to the rule to allow spouses to execute and sign one PS Form 1583 and for parents or guardians to receive delivery of a minor’s mail by listing the minor’s name and age on their forms. The Postal Service adopted this suggestion.

Some CMRAs oppose the new provision, proposed D042.2.6(b), that requires addressees to disclose on PS Form 1583 when a private mailbox is being used for doing or soliciting business to the public. They expressed concern for their customers’ privacy and about the lack of similar provisions for post office box service customers.

An identical requirement, noted in section 265(d) of title 39 of the Code of Federal Regulations, currently applies to users of post office box service. Under 39 C.F.R. 265.6(d)(3), parties may request information concerning the recorded name, address, and telephone number of the holder of a post office box

being used for doing or soliciting business with the public, or any person applying on behalf of a holder (see Administrative Support Manual 352.44(c)). Thus, the Postal Service, in adopting this proposal, is adopting the same provision that has been in place with respect to post office box service.

The CMRA commenters opposed the proposal to submit quarterly alphabetical listings to the postmaster of all new customers, current customers, and those customers who terminated within the past 12 months, including the date of termination (proposed D042.2.6(d) and D042.2.7(c)). The commenters asserted that these requirements are burdensome and unnecessary and that the current annual submission is sufficient. They also argued that submission of their copy of PS Form 1583 to the post office with the termination date should serve as immediate notification of the termination date and contended that this action should cease further delivery of the former customers' mail to the CMRA.

While generally supporting the submission of a quarterly list, one commenter recommended that the list also include the re-mail address of former customers.

After consideration of the comments, the Postal Service has determined to adopt the requirement that lists be submitted quarterly. The annual submission of the updated list of CMRA customers is inadequate. The average customer turnover rate at CMRAs is significant and recurrent. An accurate quarterly list of CMRA customers is necessary for the Postal Service to ensure mail security and compliance with CMRA requirements. The list will allow us to ensure that all addressees receiving mail at a CMRA have a completed PS Form 1583 on file at the Postal Service. We do not believe that the provision of a quarterly list will be unduly burdensome to CMRAs. In this respect, the Postal Service has eliminated the requirement to immediately notify the Postal Service of customers who have terminated their relationships with the CMRA. Instead, the CMRA will notify the Postal Service on a quarterly basis as part of the listing. The current procedure of notifying the Postal Service of the termination date of a customer relationship does not cease delivery of the customer's mail to the CMRA. The PS Form 1583 agreement obligates the Postal Service to deliver the intended addressee's mail to the CMRA. The Postal Service currently uses, and will continue to use, the termination date to determine the end of

the retention period for the PS Form 1583.

The Postal Service has determined not to adopt the proposal that the CMRA provide the Postal Service, as part of the quarterly list, all addresses to which the agency re-mails mail. Requiring the CMRAs to include these addresses on the quarterly lists would impose an unnecessary burden on the CMRAs. The Postal Service has revised section D042.2.7(b) to require the CMRAs to provide these addresses on request, consistent with current policy.

The Postal Service is adopting a modification proposed by a CMRA. Noting the possible conflicts with other end-of-the month responsibilities, the commenter suggested that the lists be due on the 15th day of the applicable months. The Postal Service has revised section D042.2.6(d) to reflect this change.

The CMRAs and their customers opposed the regulation requiring the use of the delivery address designation "PMB" (private mailbox) that specifies the location to which a mailpiece is delivered. They perceive the use of the "PMB" designation as "unnecessary and a stigma that unfairly portrays the CMRA customer as somehow unsavory." Additionally, some CMRA customers will incur costs to print new stationery and to notify all current correspondents of the address change.

Commenters supporting the proposed rule, including business, consumer, and law enforcement associations, strongly endorsed the address designation. They believed that the designation would greatly assist business and law enforcement authorities in the prevention and detection of fraudulent activity with a minimum adverse effect on businesses or individuals; and suggested that adoption would be in the best interest of mailers and the general public. One commenter went on to assert that some of the proposed amendments did not go far enough and suggested even tougher requirements. The commenter expressed concern that many people would not recognize that "PMB" stands for private mailbox, and suggested using "private mailbox" or "rental mailbox."

After consideration of the comments, the Postal Service has determined to adopt the proposed rule. The comments supporting the proposal testify to the need for mailers to know the identity of the location to which a mailpiece is delivered. These comments also minimize the possibility of discriminatory treatment of CMRA customers. They indicate that businesses can adopt safeguards to protect themselves and their customers

while continuing to provide credit card and other services to the addressee that receives mail at a CMRA.

The Postal Service believes that "PMB (private mailbox)" is the most appropriate description for the CMRA customer address designation. Use of the complete secondary designation name in the address might cause operational problems. The Postal Service uses automated equipment to sort and to distribute mail. The automated equipment identifies the word "box" in the address and associates it with a post office box number in the zone. In many instances, the automated equipment will code and sort this type of address to the post office box bearing that number. This causes an undue mail delay. The Postal Service designed the "PMB" acronym for "private mailbox" to prevent such mail delays while establishing the true address identity of mail delivered to CMRAs. The Postal Service also believes that the acronym "PMB" should not cause long-term confusion among customers.

As a further note, this proposal is consistent with the current policy of general addressing standards as required by Domestic Mail Manual A010.1.1 and A010.1.2, Address Content and Placement. PMB (private mailbox) simply specifies the location to which a mailpiece is delivered like APT (apartment), STE (suite), and PO BOX (post office box) address designations. Current use of APT, STE, and other address designations by CMRA customers is misleading and does not identify the true location of the mailpiece delivery. This misrepresentation of a mailing address is not in the best interest of and may cause irreparable harm to the sender. The sender has a primary right to know the true identity of the location to where his or her mail is delivered. Properly addressed mail serves the best interests of all.

While the Postal Service has determined to adopt the proposal, it is nevertheless sensitive to the needs of CMRAs and their customers. CMRA customers should begin making changes now but will receive up to 6 months after the Final Rule effective date to be in full compliance. The Postal Service recognizes that CMRA customers may need to print new stationery. This 6-month period is sufficient to advise correspondents and to make any other changes to comply with the address requirement. Accordingly, we urge the CMRAs and their customers to begin the notification process and conversion to the required address as quickly as possible. The Postal Service will require

strict adherence to the address requirement. At the end of this 6-month period, the Postal Service will return mail without a proper address to the sender endorsed "Undeliverable as Addressed."

Some CMRAs oppose the proposed regulation assigning authority to the postmaster to suspend delivery to a CMRA that fails to comply with Domestic Mail Manual regulations or other applicable postal requirements. The commenters believe there is no requirement or opportunity to allow the CMRA to come into compliance.

This provision is not new, but merely codifies current policy into the DMM. Current CMRA regulations assign authority to the postmaster to suspend mail delivery to a CMRA for noncompliance with DMM regulations (see 612.14, Compliance with Proper Procedures, of the Postal Operations Manual). The CMRA must receive written notification identifying the violation(s) and reasonable time to come into compliance. If the CMRA fails to comply with the written notification, the postmaster must receive approval from the next higher level and notify the Postal Inspector-In-Charge before suspending delivery service to a CMRA. Upon approval, the postmaster must provide the CMRA with written notification of the effective date and the reason(s) for suspension of delivery. If the CMRA fails to comply by the effective date, mail will be returned to the sender endorsed "Delivery Suspended to Commercial Mail Receiving Agency." The next higher level authority may disagree with the time allotted for compliance or with the severity of the violation(s) and not approve the action. This postal procedure is designed to prevent unnecessary delays in mail delivery and provide the postmaster with the means to maintain compliance. The Postal Service believes the regulation is fair and reasonable to the CMRA and its customers.

Provisions concerning the handling of mail after delivery to CMRAs attracted comments from CMRAs, their customers, a mailers association, and a consumer organization. The CMRAs, their customers, and a mailers association opposed the provision limiting the ability of former customers to file change-of-address orders with the Postal Service and the requirement to pay new postage when re-mailing pieces to former customers. The CMRAs also opposed the provision limiting their ability to refuse mail for their customers. The consumer organization questioned whether CMRAs should be permitted to re-mail pieces to current or

former customers, even when that is the desire of the parties. This commenter asserted that there is "no compelling reason why a legitimate addressee would need to arrange for forwarding on a permanent basis." The commenter urged adoption of a rule that would restrict re-mailing to a period of several weeks while a current customer is out of town or for 3 months after termination of the agency relationship. The commenter asserted that these provisions are necessary to prevent fraud.

Some of the comments appear to be based on misconceptions. A number of comments asserted that all other customers receive mail-forwarding service. To the extent that these commenters seek the right to file change-of-address orders with the Postal Service, this assertion is incorrect. Anyone who receives mail at a single point or bulk delivery location, such as residents of universities, hospitals, and other institutions, and some apartment or mobile home parks, as well as at their places of employment, may not file change-of-address orders. In each of these cases, the institution must place the individual's new address on the piece in order to redirect the mail. The difference between the CMRAs and these other locations is that the CMRA must re-mail the piece and affix new postage to send it to the individual. The reasons for this distinction are further discussed below.

Many commenters appear to believe that the policies codified in these DMM provisions are new. The majority of these policies are not new. To the extent that there are changes, at least portions of them ease the current requirements on the CMRAs and their customers. For instance, the restrictions against CMRA customers filing change-of-address orders and requiring payment of new postage to re-mail items are consistent with long-standing policy. Indeed, these provisions have long been set forth in postal regulations and reprinted on PS Form 1583. More important, these provisions implement standards in 2025 of the Domestic Mail Classification Schedule (DMCS). They cannot be changed by the Postal Service without a request and proceeding before the Postal Rate Commission.

These policies are clearly consistent with the mandate that the Postal Service operates efficiently. As is the case with other entities receiving bulk delivery of mail, it is impractical for the Postal Service to accept change-of-address orders from former CMRA customers. To do so would require the Postal Service to manually inspect large quantities of mail to extract individual

pieces addressed to customers filing change-of-address orders. This would entail significant time and expense for the Postal Service and delay the timely delivery of mail.

As noted above, other entities receiving bulk delivery of mail may redirect mail to former residents and other parties by writing the new address on the piece. No additional postage is required. Under the existing DMCS and DMM rules, CMRAs must affix new postage to re-mail mailpieces to former customers. This treatment is warranted. Unlike other bulk delivery points, CMRAs advertise and charge customers for mail service, which is a primary, rather than an incidental, part of their business. It is reasonable to expect CMRAs to perform this service completely by requiring CMRAs to ensure that mail continues to reach former customers. Many CMRAs already perform this same re-mailing service for customers not located in the same geographic area as the CMRA or who otherwise do not wish to travel to the CMRA to pick up mail.

The costs of re-mailing also should not be burdensome to the CMRAs. They are free to pass these costs on to their customers. The Postal Service understands that many, if not all, CMRAs already charge customers to re-mail their correspondence. The CMRA and the customers can make arrangements to reduce these costs by aggregating the pieces and paying postage on a single package rather than re-mailing each piece. The Postal Service believes it is appropriate that these costs be borne by the CMRA customer rather than be passed on to all postal customers, which would occur if the re-mailing costs were imposed on the Postal Service.

The Postal Service has determined not to adopt the suggestion by one commenter restricting CMRAs from re-mailing to current or former customers. The Postal Service understands that CMRAs routinely provide such services to customers. The suggestion would appear to prevent such persons from using CMRAs, and accordingly would have a significant adverse impact on these individuals as well as on the business of the CMRA.

The comments concerning the refusal of mail were generally received from CMRAs. These questions have arisen in the past and have been the subject of a number of rulings, some of which are potentially conflicting. This has included rulings that CMRAs may not refuse mail under any circumstances as well as rulings allowing CMRAs to refuse mail.

The issues concerning a CMRA's obligation to re-mail material to current or former customers (as opposed to redirecting it without affixing new postage) and their entitlement to refuse mail are linked in our view. A CMRA's obligation to re-mail matter may be circumvented by the expedient of returning mail without payment of new postage. Thus, a CMRA could avoid re-mailing pieces to a former customer if it could simply mark the piece "refused" and return it to the Postal Service. This adversely affects a number of parties: the sender whose mail does not reach the intended recipient, the addressee who does not receive it, and the Postal Service and its customers, which incurs the costs of returning the piece to the sender.

Accordingly, there are significant reasons to limit the refusal of mail by CMRAs. This conclusion is also consistent with the underlying relationship between the CMRA and its customer. By using PS Form 1583, the customer directs the Postal Service to deliver its mail to the CMRA, which is in the business of, and charges for, the receipt of such mail and holding it for pick up or re-mailing to the customer with payment of new postage. There is no provision to rescind this direction or for the CMRA to abandon its obligation to handle the individual's mail and to impose that responsibility on the Postal Service.

The Postal Service did, nevertheless, propose a limit on the obligation of CMRAs to re-mail mailpieces addressed to former customers and a limited authority to refuse mail. The Postal Service proposed to limit the period to 12 months for CMRAs to re-mail to former customers, after which the CMRAs could return only First-Class Mail to the Postal Service, with a specified endorsement. The proposed rule also clarified the conditions under which the CMRA can refuse mail and return it to the Postal Service with a specified endorsement.

In consideration of a comment, the Postal Service has determined to reduce the required period to re-mail to former customers to at least 6 months. This reasonably balances the interests and obligations of the senders of the mail, the CMRAs, former CMRA customers, and the Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual (DMM) which are incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

The Domestic Mail Manual is amended by revising modules A, D, and F as follows:

A Addressing

A000 Basic Addressing

A010 General Addressing Standards

1.0 ADDRESS CONTENT AND PLACEMENT

* * * * *

1.2 Address Elements

[Revise A010.1.2b as follows:]

* * * * *

b. Street and number. (Include the apartment number, or use the post office box number, or private mailbox (PMB) number, or general delivery, or rural route or highway contract route designation and box number, as applicable.)

* * * * *

3.0 COMPLETE ADDRESS

* * * * *

3.2 Elements

[Revise A010.3.2d as follows:]

* * * * *

d. Secondary address unit designator and number (such as an apartment, suite, or private mailbox number (APT 202, STE 100, PMB 300)).

* * * * *

5.0 RESTRICTIONS

* * * * *

[Add new 5.3 as follows:]

5.3 Mail Addressed to CMRAs

Mail sent to an addressee at a commercial mail receiving agency (CMRA) must be addressed to their private mailbox (PMB) number at the CMRA mailing address.

* * * * *

D Deposit, Collection, and Delivery

* * * * *

D042 Conditions of Delivery

* * * * *

2.0 DELIVERY TO ADDRESSEE'S AGENT

* * * * *

2.5 CMRA

[Revise D042.2.5 as follows:]

The procedures for the establishment of a commercial mail receiving agency:

a. An addressee may request mail delivery to a commercial mail receiving agency (CMRA). The CMRA accepts delivery of the mail and holds it for pickup or re-mails it to the addressee, prepaid with new postage.

b. Each CMRA must register with the post office responsible for delivery to the CMRA. Any person who establishes, owns, or manages a CMRA must provide a Form 1583–A, Application to Act as Commercial Mail Receiving Agency, to the postmaster (or designee) responsible for the delivery address. The CMRA owner or manager must complete all entries and sign the Form 1583–A. The CMRA owner or manager must furnish two items of valid identification; one item must contain a photograph of the CMRA owner or manager. The following are examples of acceptable identification:

- (1) Valid driver's license.
- (2) Armed forces, government, or recognized corporate identification card.
- (3) Passport or alien registration card.
- (4) Other credential showing the applicant's signature and a serial number or similar information that is traceable to the bearer.

The postmaster (or designee) may retain a photocopy of the identification for verification purposes. Furnishing false information on the application or refusing to give required information will be reason for denying the application. When any information required on Form 1583–A changes or becomes obsolete, the CMRA owner or manager must file a revised application with the postmaster.

c. The postmaster (or designee) must verify the documentation to confirm that the CMRA owner or manager resides at the permanent home address shown on Form 1583–A; witness the signature of the CMRA owner or manager; and sign Form 1583–A. The postmaster must provide the CMRA with a copy of the DMM regulations relevant to the operation of a CMRA. The CMRA owner or manager must sign the Form 1583–A acknowledging receipt of the regulations. The postmaster must file the original of the completed Form 1583–A at the post office and provide the CMRA with a duplicate copy.

d. The approval of Form 1583–A does not authorize the CMRA to accept accountable mail (for example: Registered, Insured, or COD) from their customers for mailing. The only acceptable mailing point for this type of Accountable mail is the post office.

2.6 Delivery to CMRA

[Revise D042.2.6 as follows:]

Procedures for delivery to a CMRA:

a. Mail delivery to a CMRA requires that the CMRA owners or manager and each addressee complete and sign PS Form 1583, Application for Delivery of Mail Through Agent. Spouses may complete and sign one Form 1583. The requirement to furnish two items of valid identification will apply to each spouse. If any information that is required on Form 1583 is different for either spouse, include it in the appropriate box. A parent or guardian may receive delivery of a minor's mail by listing the name(s) and age(s) (block 13) of the minor(s) on Form 1583. The CMRA owner or manager, authorized employee, or a notary public must witness the signature of the addressee. The addressee must complete all entries on Form 1583. The CMRA owner or manager must verify the documentation to confirm that the addressee resides or conducts business at the permanent address shown on Form 1583. The address is verified if there is no discrepancy between information on the application and the identification presented. If the information on the application does not match the identification, the applicant must substantiate to the CMRA that the applicant resides or conducts business at the address shown. If the applicant is unable to substantiate the address, the CMRA must deny the application. Furnishing false information on the application or refusing to give required information will be reason for withholding the addressee's mail from delivery to the agency and returning it to the sender. When any information required on Form 1583 changes or becomes obsolete, the addressee must file a revised application with the CMRA. The addressee must furnish two items of valid identification; one item must contain a photograph of the addressee. The following are examples of acceptable identification:

- (1) Valid driver's license.
- (2) Armed forces, government, or recognized corporate identification card.
- (3) Passport or alien registration card.
- (4) Other credential showing the applicant's signature and a serial number or similar information that is traceable to the bearer.

The CMRA owner or manager may retain a photocopy of the identification for verification purposes. The CMRA owner or manager must list the two types of identification (block 9) and write the complete CMRA delivery address used to deliver mail to the addressee (block 3) on Form 1583.

b. The addressee must disclose on Form 1583 when the private mailbox is being used for the purpose of doing or soliciting business to the public. The

information required to complete this form may be available to the public if "yes" in block 5 on Form 1583 is checked.

c. The CMRA must provide the original of completed Forms 1583 to the postmaster. This includes revised Forms 1583 (write revised on form) submitted by an addressee based on information changes in the original Form 1583. The CMRA must maintain duplicate copies of completed Forms 1583 on file at the CMRA business location. The Forms 1583 must be available at all times for examination by postal representatives and postal inspectors. The postmaster must file the original Forms 1583 alphabetically by the addressee's last name for each CMRA at the station, branch, or post office. The postmaster files the original Forms 1583 without verifying the address of residence or firm shown on Forms 1583. Verification is required only when the postmaster receives a request by the Postal Inspector-In-Charge, or when there is reason to believe that the addressee's mail may be, or is being, used for unlawful purposes.

d. When the agency relationship between the CMRA and the addressee terminates, the CMRA must write the date of termination on its duplicate copy of PS Form 1583. The CMRA must notify the post office of termination dates through the quarterly updates (due January 15, April 15, July 15, and October 15) of the alphabetical list of customers cross-referenced to the CMRA addressee delivery designations. The alphabetical list must contain all new customers, current customers, and those customers who terminated within the past 6 months, including the date of termination. The CMRA must retain the endorsed duplicate copies of Forms 1583 for at least 6 months after the termination date. Forms 1583 filed at the CMRA business location must be available at all times for examination by postal representatives and postal inspectors.

e. A CMRA must represent its delivery address designations for the intended addressees as a private mailbox (PMB). The CMRA delivery address must specify the location to which the mailpiece is delivered. Mailpieces must bear a delivery address that contains at least the following elements, in this order:

- (1) Intended addressee's name or other identification. Examples: Joe Doe or ABC CO.
- (2) PMB and number. Example: PMB 234.
- (3) Street number and name or post office box number or rural route

designation and number. Examples: 10 Main St or PO BOX 34 or RR 1 BOX 12.

(4) City, state, and ZIP Code (5-digit or ZIP+4). Example: Herndon VA 22071-2716.

The CMRA must write the complete CMRA delivery address used to deliver mail to each individual addressee or firm on the Form 1583 (block 3). The Postal Service will return mail without a proper address to the sender endorsed "Undeliverable as Addressed."

f. A CMRA or the addressee must not modify or alter Form 1583 or Form 1583-A. Modified or altered forms are invalid and the addressee's mail must be returned to sender in accordance with Postal Service regulations.

g. The CMRA must be in full compliance with DMM D042.2.5 through D042.2.7 and other applicable postal requirements to receive delivery of mail from the post office.

h. The postmaster may, with the next higher level approval and notification to the Postal Inspector-In-Charge, suspend delivery to a CMRA that, after proper notification, fails to comply with D042.2.5 through D042.2.7 or other applicable postal requirements. The proper notification must be in writing outlining the specific violation(s) with a reasonable time to comply.

i. With the approval of suspension of delivery, the postmaster must provide the CMRA with written notification of the effective date and the reason(s). If the CMRA fails to comply by the effective date, return mail to the sender endorsed "Delivery Suspended to Commercial Mail Receiving Agency."

2.7 Addressee and CMRA Agreement

[Reviser D042.2.7 as follows:]

In delivery of the mail to the CMRA, the addressee and the CMRA agree that:

a. When the agency relationship between the CMRA and the addressee terminates, neither the addressee nor the CMRA will file a change-of-address order with the post office.

b. The CMRA must re-mail mail intended for the addressee for at least 6 months after the termination date of the agency relationship between the CMRA and addressee. When re-mailed by the CMRA, mail requires payment of new postage. At the end of the 6-month period, the CMRA may return only First-Class Mail received for the former addressee (customer) to the post office. The CMRA must return this mail to the post office the next business day after receipt with this proper endorsement: "Undeliverable, Commercial Mail Receiving Agency, No Authorization to Receive Mail for This Addressee." Return this mail without payment of new postage to the post office. The

CMRA must not deposit return mail in a collection box. The CMRA must give the return mail to the letter carrier or return it to the post office responsible for delivery to the CMRA. Upon request, the agent must provide to the Postal Service all addresses to which the agency re-mails mail.

c. The CMRA must provide to the postmaster a quarterly list (due January 15, April 15, July 15, and October 15) of its customers in alphabetical order cross-referenced to the CMRA addressee delivery designations. The alphabetical list must contain all new customers, current customers, and those customers who terminated within the past 6 months, including the date of termination.

d. A CMRA may not refuse delivery of mail if the mail is for an addressee that is a customer or former customer (within the past 6 months). The agreement between the addressee and the CMRA obligates the CMRA to receive all mail, except restricted delivery, for the addressee. The addressee may authorize the CMRA in writing on Form 1583 (block 6) to receive restricted delivery mail for the addressee.

e. If the CMRA has no Form 1583 on file for the intended addressee, the CMRA must return that mail to the post office responsible for delivery. The CMRA must return this mail to the post office the next business day after receipt with this proper endorsement: "Undeliverable, Commercial Mail Receiving Agency, No Authorization to Receive Mail for This Addressee." Return this mail without payment of new postage to the post office. The CMRA must return misdelivered mail the next business day after receipt.

f. The CMRA must not deposit return mail in a collection box. The CMRA must give the return mail to the letter carrier or return it to the post office responsible for delivery to the CMRA.

* * * * *

F000 BASIC SERVICES

* * * * *

[Revise Exhibit F010.4.1 to add an endorsement.]

* * * * *

Delivery Suspended to Commercial Mail Receiving Agency

Failure to Comply with D042.2.5–D042.2.7

* * * * *

F020 FORWARDING

* * * * *

2.0 FORWARDABLE MAIL

* * * * *

[Add new F020.2.7 as follows:]

2.7 Mail CMRA Customers

Mail addressed to an addressee at CMRA is not forwarded through the USPS. The CMRA customer may make special arrangements for the CMRA operator to re-mail the mail with payment of new postage. A CMRA must accept and re-mail mail to former customers for at least 6 months after termination of the agency relationship. After the 6-month period, the CMRA may refuse mail addressed to a former customer.

* * * * *

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 99–7352 Filed 3–24–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 201–0138a; FRL–6309–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). This action is an administrative change which revises the emergency episode provisions in South Coast Air Quality Management District (SCAQMD) Rule 701.

The intended effect of approving this rule is to incorporate changes to the rule for clarity and consistency in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on May 24, 1999 without further notice, unless EPA receives adverse comments by April 26, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule is available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1189.

SUPPLEMENTARY INFORMATION:

Applicability

The rule being approved into the California SIP is SCAQMD Rule 701, Air Pollution Emergency Contingency Actions. This rule was submitted by the California Air Resources Board to EPA on September 8, 1997.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the South Coast Air Quality Management District. 43 FR 8964, 40 CFR 81.305. The requirements for the Prevention of Air Pollution Emergency Episodes for sulfur dioxide, carbon monoxide, nitrogen dioxide, ozone and particulate matter are located in 40 CFR Part 51, Subpart H. These requirements include provisions for classification of regions for episodes plans, significant harm levels, contingency plans and re-evaluation of episode plans. SCAQMD